

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Joseph R. Tomelleri,  
Plaintiff,

v.  
BVL, Inc. d/b/a Border View Lodge,  
and  
Sandpieper Design Inc.,  
Defendants.

No. 0:23-cv-887

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

Plaintiff Joseph R. Tomelleri, by through his counsel of record, and for his complaint against Defendants BVL, Inc. d/b/a Border View Lodge and Sandpieper Design Inc., states as follows:

**GENERAL NATURE OF THE CASE**

1. This case involves Defendants' copyright infringement of at least three (3) fish illustrations created and owned by Joseph Tomelleri. Defendants used the illustrations to advertise and promote their goods and services.

**JURISDICTION AND VENUE**

2. This claim is brought pursuant to 17 U.S.C. § 101, et seq.
3. This Court has federal question jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this case arises under the copyright laws of the United States. (17 U.S.C. § 101 et seq.).
4. This Court has personal jurisdiction over Defendant BVL, Inc. because Defendant is organized in and has a principal office for conducting business in Minnesota.
5. This Court has personal jurisdiction over Defendant Sandpieper Design Inc. because Defendant is organized in and has a principal office for conducting business in Minnesota.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(1) because Defendants are located in this judicial district.

### **PARTIES**

7. Plaintiff is an adult individual and a resident of the State of Kansas.

8. Defendant BVL, Inc. is a Minnesota corporation.

9. Defendant BVL, Inc. may be served at its registered office address, 3409 State HWY 172 NW, Baudette, Minnesota 56623.

10. Defendant Sandpieper Design Inc. is a Minnesota corporation.

11. Defendant Sandpieper Design Inc. may be served via its Chief Executive Officer, Catherine Pieper, at 1099 9th Ave SE, Baudette, Minnesota 56623.

### **TOMELLER'S BACKGROUND AND WORKS**

12. Plaintiff Joseph Tomelleri is an artist and a trained biologist who has spent most of his working life collecting, studying, and illustrating North American fish species. He is one of the world's best fresh water fish illustrators.

13. Over a 35-year career, Mr. Tomelleri has created over 1,300 hand drawn illustrations of fish in various life cycles.

14. Mr. Tomelleri's illustrative process involves his expertise gained from many years of education, his observations of fish in the wild and obtaining and preserving specimens.

15. Mr. Tomelleri hand draws his illustrations.

16. He incorporates his own expression of color patterns, fin arrangements and other characteristics he believes most significant for a particular fish species in a particular life cycle phase.

17. His illustrations have been published in numerous scientific studies, journals, books, magazines, and fish identification guides.

18. Mr. Tomelleri is the sole owner and proprietor of all rights, titles, and interest in, and to, the copyrights for the illustrations at issue in this case (the “Illustrations”).

19. Joseph Tomelleri is and always has been the exclusive owner of the Illustrations.

20. Each of the Illustrations is covered by a copyright registration owned by Mr. Tomelleri.

21. The following are Mr. Tomelleri’s Illustrations at issue in this case and the corresponding registration information.

| No. | Illustration    | Reg. #      | Reg. Date  |
|-----|-----------------|-------------|------------|
| 1   | Smallmouth Bass | VA 1 673790 | 05/06/2009 |
| 2   | Walleye         | VA 1 673790 | 05/06/2009 |
| 3   | White sucker    | VA 1 799485 | 05/26/2011 |

### **DEFENDANT’S INFRINGING CONDUCT**

22. Defendant BVL, Inc., while doing business as Border View Lodge, is in the vacation lodge renting business.

23. In order to advertise and promote its business, and sell reservations, Defendant BVL, Inc. maintains a website at the URL <https://borderviewlodge.com/> (the “Website”).

24. Plaintiff discovered that Defendant BVL, Inc., without authorization, reproduced and displayed the Illustrations or their derivatives on the Website.

25. The Illustrations used on the Website were placed to advertise the goods and services of the lodge.

26. Defendant Sandpieper Design Inc. is in the web design business.

27. Defendant Sandpieper Design Inc. was hired by Defendant BVL, Inc. to create the Website.

28. Defendant Sandpieper Design Inc. displayed the Illustrations on the Website it designed and created for Defendant BVL, Inc.

**COUNT I - COPYRIGHT INFRINGEMENT**

**(17 U.S.C. § 501)**

29. Plaintiff restates the allegations contained in paragraphs 1-28 as if fully set forth herein.

30. Plaintiff has valid copyrights and copyright registrations for the Illustrations.

31. Defendants copied Plaintiff's copyrighted works, including preparing derivative works based upon the Illustrations.

32. Defendants have infringed Plaintiff's copyrights in his Illustrations by reproducing and publicly displaying unauthorized copies of the Illustrations and/or derivatives thereof on the Website.

33. Defendants have infringed Plaintiff's copyright in his Illustrations by distributing the Illustrations to the public via the Website.

34. Defendants had access to the Illustrations and the images used by Defendants are strikingly similar to the Illustrations.

35. As a result of Defendants' above-described acts of copyright infringement, Plaintiff has sustained damages including lost licensing revenue in an amount not yet ascertained and profits that should be disgorged to Plaintiff.

**PRAYER FOR RELIEF**

WHEREFORE, for the reasons stated above, Plaintiff prays for judgment jointly and severally against Defendants as follows:

a. Under 17 U.S.C. § 502, grant temporary and final injunctions on such terms as it deems reasonable to prevent or restrain infringement of Plaintiff's copyright.

b. Under 17 U.S.C. § 503, order the impounding and ultimately destruction, on such terms as it may deem reasonable, of any records or material involved in Defendants' copyright infringement.

c. Under 17 U.S.C. § 504, award Plaintiff's actual damages and any additional profits of Defendants, or, if Plaintiff so elects before judgment is entered, award statutory damages.

d. Under 17 U.S.C. § 505, award costs to Plaintiff;

e. Under 17 U.S.C. § 505, as the prevailing party in a Copyright lawsuit, award to Plaintiff reasonable attorneys' fees.

f. Awarding Plaintiff all available pre-judgment and post-judgment interest on all amounts of any judgment; and

g. Grant to Plaintiff such further relief as may be equitable and proper.

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Dated: April 7, 2023

Respectfully submitted,

s/ Steven H. Mustoe

STEVEN H. MUSTOE (*pro hac vice* motion forthcoming)

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and

s/ Austen Zuege

Austen Zuege (MN Bar No. 330,267)

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